

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35380/35979

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 473
	)	
Plaintiff-Respondent,	)	Filed: May 22, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JAMES D. LUNA,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Thomas J. Ryan, District Judge.

Judgment of conviction and unified sentence of twenty-five years, with seven years determinate, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rosemary Emory, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge, GUTIERREZ, Judge  
and GRATTON, Judge

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PER CURIAM

James D. Luna was indicted by a grand jury for lewd conduct with a child under the age of sixteen, I.C. § 18-1508, and pled guilty to the charge. The district court sentenced Luna to a unified term of twenty-five years, with seven years determinate. In case number 35380, Luna appeals from his judgment of conviction and sentence, contending that the district court abused its discretion by imposing an excessive sentence.

Luna filed a *pro se* Idaho Criminal Rule 35 motion for reduction of sentence. The district court appointed counsel for Luna in support of his Rule 35 motion. The court allowed thirty days for filing of an amended motion for reduction of sentence or for supplementation of Luna's

*pro se* motion. After receiving no additional information, the district court denied Luna's Rule 35 motion. In case number 35979, Luna appeals from the denial of his Rule 35 motion, contending that the district court abused its discretion by denying his Rule 35 motion. The cases were consolidated for purposes of appeal.

Where a sentence is within the statutory limits, it will not be disturbed on appeal absent an abuse of the sentencing court's discretion. *State v. Hedger*, 115 Idaho 598, 604, 768 P.2d 1331, 1337 (1989). We will not conclude on review that the sentencing court abused its discretion unless the sentence is unreasonable under the facts of the case. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). In evaluating the reasonableness of a sentence, we consider the nature of the offense and the character of the offender, applying our well-established standards of review. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 170 P.3d 387 (2007).

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

Applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion by imposing Luna's sentence and by denying his Rule 35 motion for reduction of sentence. Accordingly, Luna's judgment of conviction and sentence are affirmed, as is the denial of his Rule 35 motion.